

设备销售合同  
Purchase Contract

二〇〇三年十月  
October, 2003

## 设备销售合同

## PURCHASE CONTRACT

编号: PO-WP-2003-202-REV.1  
Contract No.: PO-WP-2003-202-REV.1

买方: 中国新兴厦门进出口公司

The Buyer: China Xinxing Xiamen Imp. & Exp. Corp.

地址: 厦门市湖滨北路振兴大厦11层

Address: 11/F, Zhenxing Building Hubin Road N. Xiamen, Fujian, China

Tel 电话: 0086-592- 5052126

Fax 传真: 0086-592-5052127 Post Code 邮政编码: 361004

卖方: 伯东企业有限公司

The Seller: Hakuto Enterprises Ltd.

地址: 香港铜锣湾高士打道280号世贸中心八楼

Address 8<sup>th</sup> Floor, World Trade Centre, No.280 Gloucester Road, Causeway Bay, Hong Kong.

电话 TEL: 00852 2578 4921

传真 FAX: 00852 2807 2498

委托方(用户): 福建泉州三安集团有限公司

The Principal (End User): Fujian Quanzhou Sanan Group Co.Ltd.

地址: 福建省 安溪 祥云路

Address: Xiangyun Road Anxi Fujian China.

电话 TEL: 0086-595-3102889

传真 FAX: 0086-595-3403858 邮政编码 Post Code: 362411

生产商: 美国 EMCORE 公司

The Manufacture: EMCORE CORPORATION

地址: 美国新泽西州萨默斯特市贝尔芒特路145号

Address: 145 Belmont Drive Somerset, New Jersey 08873, U.S.A.

电话 TEL: 001-732-271-9090

传真 FAX: 001-732-271-9686

本合同由买方、卖方及委托方共同订立, 根据本合同规定的条款, 买方及委托方同意购买, 卖方同意出售下述商品

This contract is made by and between the buyer, the seller and the principal, whereas the buyer and the principal agree to buy and the seller agrees to sell the under-mentioned commodity according to the following terms and conditions:

1、商品名称及规格: Name of commodity and specifications

货名与规格 Commodity and Specifications	数量 Quantity	单价: 美元 Unit Price: USD	总价: 美元 Total Amount: USD
D300 GaN System	5 sets	\$2,824,000.00	\$14,120,000.00
总值: 壹仟肆百壹拾贰万美元整, 厦门机场到岸 GRAND TOTAL: USD \$14,120,000.00			
Grand Total: SAY US DOLLAR FOURTEEN MILLION ONE HUNDRED-TWENTY THOUSAND ONLY, CIP XIAMEN AIRPORT. (USD14,120,000.00)			

2、生产国别及制造厂商: 美国 EMCORE 公司

Country of Origin and Manufacturer: EMCORE CORPORATION, U.S.A.

3、包装 Packing: 国际空运包装, 具有防潮, 防震, 及其它应有的措施。

International Transportation Package, Protection from humidity, vibration and other means suitable for this transportation.

若采用针叶木材做包装材料时, 需提供美国官方出具的该木材已经过薰蒸处理过的卫生检疫证书。  
If conifer timber is used as the packing materials, the seller should provide the Fumigation Certificate issued by the authorized department of the US government.

4、唛头: Shipping Mark:

卖方应在每件包装上, 用不褪色油墨清楚地标刷件号、尺码、毛重、净重并刷有下列唛头:

PO-WP-2003-202-REV.1

中国 厦门

On the surface of each package, the package number, measurements, gross weight, net weight, the lifting positions, and the following shipping mark shall be stenciled legibly in fadeless paint:

PO-WP-2003-202-REV.1

Xiamen China

5. 装运期限: 收到首笔预付款后 18 个月内发运全部合同货物, 允许分批交货。

得到美国政府的出口许可证是本合同货物交运的基本条件。

Time of Shipment: All systems under this contract is to be shipped within 18 month from the time of receipt of first down payment. Partial shipment is allowed. Details as per attachment of shipment schedule.

Export License is regarded as one of the required condition for effectiveness of shipment for this contract.

6. 装运口岸: 美国主要机场, 允许转运。

Port of Shipment: USA Main Airport; Trans-Shipment allowed.

7. 到货口岸: 中国厦门机场 / 中国厦门口岸

Port of Destination: Xiamen Airport, China. / Xiamen Port, China.

8. 保险: 由卖方承担, 投保金额为合同总金额百分之一百一十 110% 包含全部险。

Insurance: 110 % contract value against all risk to be covered by the Seller.

9. 付款条件:

9.1. 保证金预付款用电汇方式支付。在买方向卖方支付预付款前, 卖方向买方开据与预付款同等金额银行保函。

The advance payment is to be paid by T/T against the seller's Performa invoice in accordance to contract terms. The seller shall issue a bank guarantee Letter of the same amount of advance payment before the effectiveness of each advance payment by the buyer.

9.2. 其余款项用不可撤销信用证根据合同规定的付款计划支付。

The balance amount is to be paid by irrevocable Letter of Credit, payable against the payment schedule in this contract.

Terms of Payment: As per attachments.

value, Airplane flight Number and the date of sailing. If a package is above 9 metric tons in weight, or over 3400mm in width, or over 2350mm on both sides in height, the sellers shall advice the buyer of the weight, and measurements of such package, In the case of dangerous goods, the seller shall cable to notify the buyer at the port of destination of their nature and the method of handling them.

12.2 卖方在货物装运后 7 天内将第十条款规定的单据各 3 套分别寄交买方及委托方。

The seller shall send to the buyer and the principal respectively three sets of documents as specified in Clause 10 by airmail within 7 days after shipment is effected.

13. 质量保证. Quality Warranty

卖方保证订货系用最上等的材料和头等工艺制成。全新，未曾用过，并完全符合规定的质量，规格和性能，卖方并保证本合同订货在正确安装，正常使用和维修的情况下，自合同货物外延生长验收合格之日起的 12 个月内。

The seller shall guarantee that the goods are made of best materials, with first class workmanship, brand new, unused and correspond in all respects with the quality specifications and performance as stipulated in this contract. The seller shall also guarantee that goods when correctly mounted and properly operated and maintained for a period of 12 months starting from the date on which the material demonstration is signed off.

14. 保密条款 Confidential Clause

买方和卖方均应对委托方购买上述设备的用途和制成工艺技术保密。

Both the seller and the buyer shall take it as confidential information that the equipments and the technical process of the contracted materials applied by the principal.

15. 检验和索赔 Inspection and Claims

15.1 在交货以前，卖方（或制造厂）应就订货质量、规格、性能、数量/重量作出正确和全面的检验，并出具货物与本合同规定相符的证明书，该证明为议付货款而应提交银行的单据的组成部分，但不能作为货物的质量、规格、性能和数量/重量的最后依据。卖方（或制造厂）应将记载试验细节和结果的书面报告附在质量证明书内。

The seller (or the manufacturers) shall, before making delivery, make a precise and comprehensive inspection of the goods as regards their quality, specifications, performance and quantity/ weight, and issue certificates certifying that the goods are in conformity with the stipulations of this contract. The certificates shall form an integral part of the documents to be presented to the paying bank for negotiation of payment, but shall not be considered as final in respect of quality. Specifications performance and quantity/ weight particulars and results of the test carried out by the seller ( or the manufacturers ) must be shown in a statement to be attached to the said quality certificate.

15.2 货物到达货口岸后，买方和卖方应共同对货物的质量、规格、数量进行初步检验。

After arrival of the goods at the port of destination the buyer and seller shall make a preliminary inspection of the goods in respect of their quality, specifications and quantity.

15.3 在本合同第 13 条规定的保证期内，如发现货物的质量/规格与本合同规定不符或缺陷包括内

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## 10、单据: Documents:

## 10.1、交运单据, Shipping documents.

10.1.1 全套可议付的洁净已装运空运提单, 空白抬头, 空白背书, 注明“运费已付”, 并通知目的地买方。

Full set of negotiable clean on board of AWB bills of lading marked 'Freight Prepaid', and made out to order, blank endorsed, and notifying the buyer at destination.

## 10.1.2 保险单或保险证明书.

Insurance policy or Insurance certification.

## 10.1.3 发票五份, 注明合同号、唛头。

Commercial Invoice in quintuplicate, indicating contract No. and shipping mark.

## 10.1.4 装箱单五份, 注明毛、净重、尺码和所装货物每项的品名数量。

Packing list in quintuplicate with indication of both gross and net weights, measurement and quantity of items packed.

## 10.1.5 按照本合同第 14.1 条规定由制造厂签发的质量和数量证明书及检验报告各两份。

Certificate of quality and quantity and test report, each in duplicate, issued by the manufacturers as specified in item of Clause 14.1 hereof.

## 10.1.6 由制造厂签发的原产地证书两份。

Certificate of Origin issued by the manufacturers in duplicate.

## 10.1.7 按照本合同第 12 条规定的货物装入飞机后立即发给买方及委托方的发货通知真实副本一份。

A true copy of fax to advise the buyer of shipment immediately after the goods are loaded on airplane as specified in Clause 12 hereof.

## 10.1.8 由美国政府授权部门签发的熏蒸证明正本一份。

One original Fumigation Certificate issued by the authorized department of the US government.

## 11、技术资料: Technical Documents

每次发货时, 卖方应将下述技术资料一整套与货物一起装箱, 运交买方。

One complete set of the following technical documents shall be packed and dispatched together with each consignment:

## 11.1 基础图 Foundation Drawing.

## 11.3 安装、操作和维修说明书. Erection, Operation, Service and Repair Instruction Books.

## 11.4 本合同规定的品质证明书 Certificate of Quality as stipulated in the contract.

## 11.5 交货期 1 个月前, 卖方应将上述各种技术资料 1 套, 以空邮寄交买方。

One Month before shipment, the sellers shall airmail to the buyer the above-mentioned technical documents.

## 12、装运通知: Shipping Advice

12.1 货物全部装入飞机后, 卖方应立即将合同编号、商品名称、数量、毛重、发票金额、航班号及航日期电告买方。如单件货物的重量超过 9 公吨或阔度超过 3400 毫米, 或两旁高度超过 2350 毫米, 则卖方应将该件重量和尺码告知买方。如由于卖方未及时装运通知电告买方, 以致货物未及时保险而发生的一切损失应由卖方负责, 如货物系属危险品, 卖方应将其性质及处理办法电告买方和到货口岸。

Immediately after the goods are completely loaded, the sellers shall cable, to notify the buyers of the contract, number name of commodity, quantity, gross weight, invoiced

在缺陷或使用不良的材料, 经双方认定买方有权向卖方索赔。

Within the warranty period stipulated in clause 13 hereof should the quality and/or the specification of the goods be found not in conformity with the contracted stipulations, including latent defect, or the use of unsuitable materials, the buyer have the right to claim against the seller upon the confirmation by both parties.

15.4 卖方收到经双方认定的买方索赔通知后, 如果在 30 天内不答复, 应视为卖方同意买方提出的一切索赔。

Any and all claims which has confirmed by both parties shall be regarded as accepted if the seller fails to reply within 30 days after receipt of the buyer's claim.

#### 16、索赔解决办法 Settlement of Claims.

如货物不符合本合同规定应由卖方负责, 同时买方按照本合同第 13、15 条的规定在索赔期限或质量保证期限内提出索赔, 卖方在取得买方同意后, 应按下列方式之一理赔。

Should the contracted goods be found not in conformity with the stipulations written in the contract, the seller shall be reliable for the discrepancies and claims made by the buyer within the period of claim or quality guarantee period as stipulated in Clause 13 and 15 of this contract, the seller shall settle the claim upon the agreement of the buyer in the following ways.

##### 16.1 同意买方退货, 并将退货金额以成交原币偿还买方。

Agree to return the goods to seller and seller to refund the same amount of purchase value to buyer.

##### 16.2 按照货物的疵劣程度, 损坏的范围和买方所遭受的损失, 将货物贬值。

Devaluate the goods according to the degree of inferiority extent of damage and amount of losses suffered by the buyer.

##### 16.3 如更换有瑕疵的货物, 更换的货物必须全新并符合合同规定的规格、质量和性能, 卖方并负担因此而产生的一切费用。对更换货物的质量保证, 按该货物的生产厂家质量保证条款执行。

In case of replacement of flaw goods, The goods replaced shall be brand-new and in accordance to the specification, quality and performance stipulated in this contract. The warranty terms for replacement goods is to subject to the parts manufacturer conditions.

#### 17、不可抗力, Force majeure

由于不可抗力而造成卖方交货迟延或不能交货时, 责任不在卖方, 但卖方应立即将事故通知买方, 并于事故发生 14 天内将事故发生地政府主管机关出给的事故证明书空邮寄交买方为证, 并取得买方认可, 在上述情况下, 卖方负有采取一切必要措施从速的责任。

The seller shall not be held responsible for any delivery in non-delivery of the goods due to force majeure. However, the seller shall advise the buyer immediately of such occurrence and within fourteen days thereafter shall send by airmail to the buyer for their acceptance a certificate issued by the competent authorities of the place where the accident occurs as evidence thereof. Under such circumstance the seller, however, is still under the obligation to take all necessary measures to hasten the delivery of the goods.

#### 18、迟交和罚款 Late Delivery and Penalty

如延迟交货除人力不可抗拒事故者外, 卖方应付给买方一个星期按迟交货物总值的 0.5% 的迟交罚款, 不足一个星期的迟交日数作为一个星期计算, 此项罚款总额不超过全部成交货总值的 5%。

在议付汇款时由银行代为扣除,或由买方在付款时进行扣除,如延迟交货超过原定期限 10 星期时,买方有权中止合同,但卖方仍应向买方缴付以上规定之罚款,不可推诿及延迟。

In case of delayed delivery except force majeure, the seller shall pay the buyer for every week of delay a penalty amounting to 0.5% of the total value of the goods whose delivery has been delayed. Any fractional part of a week is to be considered a full week. The total amount of penalty shall not, however, exceed 5% of the total of the goods involved in late delivery and is to be deducted from the amount due to the seller by the paying bank at the time of negotiation, or by the buyer directly at the time of payment. In case the period of delay exceeds 10 weeks after the stipulated delivery date the buyer has the right to terminate this contract but the seller shall not thereby be exempted from the payment of penalty.

19. 单方终止合同赔偿: 除双方认可的不可抗力外, 如果双方之任何一方单方面终止合同另一方有权向终止方要求赔偿并且合同终止方同意向另一方赔偿合同总额的百分之百, 100%, 的合同违约金。

CANCELLATION Compensation: In case of any party binding with this contract cancel this order after signing off, except for Force majeure, the other party have the right to claim a compensation and the party who make the cancellation of contract agree to pay the compensation to the other party for an amount of hundred percent, 100%, of total contract value.

20. 迟付款罚金:

如果买方没有按时履行根据双方约定本合同之付款义务, 除不可抗拒事故者外, 买方应根据本条款向卖方支付迟付款罚金。计算方法为每迟付一个星期支付罚金合同总值的 0.5%, 不足一个星期的迟交日数作为一星期计算。此项罚款总额不超过合同总金额的百分之五 5%。

Late Payment Penalty: In case the buyer would not make the payment to the seller on time in accordance with payment schedule of this contract, except for the force majeure, The buyer is liable to pay a late payment penalty to the seller in according to formulation of: Each week late time shall pay a penalty of 0.5 percent of total contract value; if the late time less than a week, it shall be regarded one week time. The maximum penalty amount of late payment penalty is not over the five percent, 5%, of total contract value.

21. 仲裁 Arbitration

凡有关本合同或执行本合同而发生的一切争执, 应通过友好协商解决, 如不能解决, 则应申请中国国际贸易促进委员会按照中国国际贸易促进委员会规定的仲裁程序在北京进行仲裁, 该仲裁委员会作出的裁决是最终的, 买卖双方均应受其约束, 任何一方不得向法院或其它机关申请变更, 仲裁费用由败诉一方负担。

All disputes in connection with this contract, or the execution thereof shall be settled through friendly negotiations. In case no settlement can be reached through negotiations, the case should then be submitted for arbitration to the Foreign Trade Arbitration Commission of China Council for the Promotion of International Trade, Beijing, in accordance with the "Provisional Rules of the Foreign Trade Arbitration Commission of the China Council or the promotion of International Trade". The arbitration shall take place in Beijing and the decision rendered by the said commission shall be final and binding upon both parties, neither party shall seek recourse to



law court or other authorities for revising the decision. The arbitration fees shall be borne by the losing party.

## 22. 知识产权

- (a) 对任何就货物侵犯美国专利的实际侵权所引起的任何索赔、要求、责任、损害赔偿、损失、费用和收费(包括合理的律师费及相关的开支), EMCORE 应为其本身及其受让人向买方及其高级职员、董事、雇员及代理人赔偿, 免其因而受损并为其进行抗辩; 但是(i) 买方必须已按照 EMCORE 的指示将货物用于其原定的用途, (ii) 买方必须没有改建或以其它方式变更货物, (iii) 对使用货物生产的任何产品在任何一方面引起的侵权或侵权的权利主张或在使用货物生产产品时所使用的程序, EMCORE 无须对买方承担赔偿责任的义务或其它责任, 及(iv) EMCORE 必须对选择律师及上述任何获提供赔偿的权利主张进行的抗辩享有唯一控制权, 并有权对上述的任何权利主张进行和解; 但 EMCORE 必须就上述的任何和解取得使买方无须承担任何与之有关的责任的完全解除。
- (b) 就根据上文第(a)段的规定进行的任何买方的抗辩而言, 买方应及时发出通知并提供任何必需的协助, 费用由 EMCORE 支付。
- (c) 除上文第(a)及(b)段的规定外, 如买方被禁止使用货物, EMCORE 应自费尽商业上合理的努力落实买方继续使用货物的权利。如 EMCORE 不能如此做, EMCORE 应自费并自行选择: (i) 以不侵权的货物更换货物; (ii) 变更货物使其不侵权; 或(iii) 如不能更换或变更货物, 将买方就货物支付的所有费用全数退还。
- (d) 上文所述的赔偿就全部或部分根据侵权或挪用任何专利、版权或其它知识产权提出的任何权利主张或法律行动而言, 构成 EMCORE 的全部责任及买方唯一及专有的补救权, 并取代所有与之有关的明示、暗示或法定的保证。在不限制上文的规定的情况下, EMCORE 没有就使用货物生产某一产品的任何特别设计或程序是否侵犯任何由第三方拥有或控制的专利或其它知识产权作出任何陈述或保证; EMCORE 也没有承诺提供适合在商业上生产某一产品的程序或产品设计。任何材料示范或程序转移是按“现状”进行, 风险和开支由买方自行承担。

## INTELLECTUAL PROPERTY

- (a) EMCORE shall, for itself and its assigns, indemnify and hold Buyer, and its officers, directors, employees, and agents harmless from and defend against any claims, demands, liabilities, damages, losses, costs and fees, including reasonable attorney fees and related expenses arising from any actual infringement of U.S. patents with respect to the goods; provided that (i) Buyer has used the goods in accordance with EMCORE's instructions for its intended purpose, (ii) Buyer has not altered or otherwise modified the goods, (iii) EMCORE shall have no obligation to indemnify or other liability to Buyer for infringement or claims of infringement arising in any way from any products produced using the goods or for any process used in manufacturing products with the goods, and (iv) EMCORE shall have sole control over the selection of counsel and the defense of any such claim for which indemnification is being provided and shall be entitled to settle any such claims; provided that in connection with any such settlement EMCORE obtains a complete release of Buyer from all liability related thereto.
- (b) Buyer shall promptly provide notice and shall provide any necessary assistance at EMCORE's expense, for any defense of Buyer as required pursuant to paragraph (a) above.
- (c) In addition to the requirements of paragraphs (a) and (b) above, if the use by Buyer of the goods is enjoined, EMCORE shall at its expense use commercially reasonable

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efforts to procure the right for Buyer to continue using the goods. If EMCORE is unable to do so, EMCORE shall at its own expense and election: (i) replace the goods with noninfringing goods; (ii) modify the goods to be noninfringing; or (iii) if unable to replace or modify the goods, refund in full all costs paid by Buyer for the goods.

- (d) THE FOREGOING INDEMNITY CONSTITUTES THE ENTIRE LIABILITY OF EMCORE AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER WITH RESPECT TO ANY CLAIM OR ACTION BASED IN WHOLE OR IN PART UPON INFRINGEMENT OR MISAPPROPRIATION OF A PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. WITHOUT LIMITING THE FOREGOING, EMCORE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER ANY PARTICULAR DESIGN OR PROCESS FOR MAKING A PRODUCT USING THE GOODS INFRINGES ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OWNED OR CONTROLLED BY A THIRD PARTY NOR DOES EMCORE UNDERTAKE TO SUPPLY A PROCESS OR PRODUCT DESIGN SUITABLE FOR COMMERCIAL MANUFACTURE OF ANY PARTICULAR PRODUCT. ANY MATERIALS DEMONSTRATIONS OR PROCESS TRANSFERS ARE ON AN "AS-IS" BASIS AT BUYER' S SOLE RISK AND EXPENSE.

23. 专有信息及技术权利

EMCORE 向买方提供的任何种类的文件、数据或信息(“保密信息”)应被视为 EMCORE 专有的信息并应由买方以保密方式处理。EMCORE 为其本身保留对保密信息享有及拥有的一切专有权利。买方未经 EMCORE 书面同意不得向任何其他人士披露任何保密信息,或将保密信息用于履行本协议以外的任何其它用途。买方应在 EMCORE 要求下将所有保密信息连同其所有文本交还给 EMCORE。本段项下的义务在本协议取消、终止或完成后仍继续有效。EMCORE 可自行选择要求买方签订另一份 EMCORE 可接受的保密协议,作为提供其认为属于专有或保密的任何文件或数据的条件。所有由 EMCORE 或为 EMCORE 生产、构思或以其它方式开发的或由于 EMCORE 所提供的技术而生产、构思或以其它方式开发的产品、信息和技术,应为 EMCORE 的专有财产,买方对上述财产不享有任何所有权或其它权利。买方同意,仅就 EMCORE 提供的产品或服务使用上述产品、信息和技术,及在其它情况下按本文件的规定以保密方式保留上述产品、信息和技术。买方特此自费将其对由 EMCORE 或为 EMCORE 就使用保密信息进行产品或服务的构思、设计、开发或生产所开发的所有的发明、贸易秘密、专利、掩模、版权、商标及其它知识产权享有的一切权利、产权和权益转让给 EMCORE,并在完善上述权利时与 EMCORE 充分合作并协助 EMCORE。

PROPRIETARY INFORMATION AND TECHNOLOGY RIGHTS

Any documentation, data, or information of any kind (“Confidential Information”) supplied by EMCORE to Buyer shall be deemed proprietary to EMCORE and treated as confidential by Buyer. EMCORE retains for itself all proprietary rights in and to all Confidential Information. Buyer shall not disclose, without EMCORE' s written consent, any Confidential Information to any other person, or use Confidential Information for any purpose other than performing under this agreement. Buyer shall return all Confidential Information, together with all copies thereof, to EMCORE at EMCORE' s request. The obligations under this paragraph shall survive the cancellation, termination or completion of this agreement. EMCORE may, at its sole option, require Buyer to execute a separate confidentiality agreement acceptable to EMCORE as a condition to providing any documentation or data which it considers proprietary or confidential. All products, information and technology produced, conceived or otherwise developed by or for EMCORE, or as a result of technology furnished by EMCORE, shall be the sole property of EMCORE, and Buyer shall have no ownership or other rights in such property. Buyer agrees to use such products, information and

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technology only in connection with products or services furnished by EMCORE and otherwise to retain them as confidential in accordance herewith. Buyer, at its cost, hereby assigns to EMCORE all right, title and interest in all inventions, trade secrets, patents, mask works, copyrights, trademarks and other intellectual property developed by or for EMCORE in connection with the conception, design, development or manufacture of products or services using Confidential Information and shall fully cooperate with and assist EMCORE in perfecting such rights.

#### 24. 损害的限制

在本文件明文地列明的保证取代及排除所有其它明示或默示的保证, 包括任何有关可销售性或适用于某一用途的默示保证。在任何情况下, EMCORE 无须对由于不当用途或滥用, 或货物操作、不当的预防维护、原系统配置的变更或 EMCORE 的雇员以外的人员进行的维修所导致的任何种类或性质的损害承担责任。此项保证不可转让给第三方。

在任何情况下, EMCORE 无须对买方或任何第三方由于种种原因而直接或间接地承担的惩罚性、刑罚性或相应的损害赔偿、预期的或损失的利润、直接的损害赔偿或时间方面的损失或其它损失或开支承担责任, 不论所采取的行动的形式, 也不论是否涉及侵权(包括疏忽)、契约、严格责任或其它方面, 也无须理会 EMCORE 是否曾经接获可能产生上述费用或损害赔偿的通知。此外, 在任何情况下, EMCORE 的总责任(连同其高级职员、董事、雇员及代理人的责任)不得超过客户就本文件项下的货物所支付的金额。

#### LIMITATION ON DAMAGES

THE WARRANTIES EXPRESSLY SET FORTH HEREIN ARE IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EMCORE BE LIABLE FOR DAMAGES OF ANY KIND OR NATURE RESULTING FROM IMPROPER OR NEGLIGENT USE, OR OPERATION OF GOODS, IMPROPER PREVENTATIVE MAINTENANCE, MODIFICATIONS FROM THE ORIGINAL SYSTEM CONFIGURATION OR REPAIR BY PERSONNEL OTHER THAN THOSE IN THE EMPLOY OF EMCORE. THIS WARRANTY IS NOT TRANSFERABLE TO THIRD PARTIES.

IN NO EVENT SHALL EMCORE BE LIABLE FOR PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES OR LOSS OF TIME OR OTHER LOSSES OR EXPENSES INCURRED BY BUYER OR ANY THIRD PARTY, DIRECTLY OR INDIRECTLY, ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER EMCORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. MOREOVER, IN NO EVENT SHALL EMCORE'S TOTAL LIABILITY (TOGETHER WITH THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) EXCEED THE AMOUNT THEREFORE PAID BY CUSTOMER IN RESPECT OF THE GOODS HEREUNDER.

#### 25. 税务与关税

所有执行本合同在中国境外产生的税务由卖方承担。

所有执行本合同根据中华人民共和国的税法向买方征收的税务, 由买方承担。

#### TAXES AND DUTIES

ALL TAXES ARISING OUTSIDE OF CHINA IN CONNECTION WITH THE EXECUTION OF THIS CONTRACT

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SHALL BE BORNE BY THE SELLERS.

ALL TAXES IN CONNECTION WITH, AND IN THE EXECUTION OF THIS CONTRACT TO BE LEVIED BY THE GOVERNMENT OF THE P.R.C. ON THE BUYERS IN ACCORDANCE WITH THE TAX LAWS IN EFFECT SHALL BE BORNE BY THE BUYERS.

26. 本合同的附件是本合同的组成部分, 具有同等的法律效力。

THE APPENDEX OF THIS CONTRACT IS A PART OF THIS CONTRACT AND POSSESS THE SAME FORCE ADDEFFECT.

27. 合同生效

当卖方收到合同的首笔预付货款后, 此合同生效。


CONTRACT EFFECTIVENESS

The effectiveness of this contract is subjected to first advance payment in receipt at the seller's account.

本合同一式 8 份, 卖方、买方、委托方和生产商各执两份为证。

This contract is made out in four original copies with the seller, the buyer, the manufacturer and the principal holding two copy each in witness thereof.

买方: 中国厦门进出口公司  
Buyer: China Xinxing Xiamen Exp. Corp.




2003 年 10 月 20 日

卖方: 柏尔企业有限公司  
The Seller: HAKUTO ENTERPRISES LTD.



2003 年 10 月 20 日

委托方(用户): 福建泉州三安集团有限公司  
The End-User: Fujian Quanzhou Sanaa Group



2003 年 10 月 21 日

生产商: EMCORE 公司  
EMCORE CORPORATION



2003 年 10 月 21 日  
(signing only as a manufacturer)



146 Belmont Drive, Somerset, NJ 08873, TEL: (732)271-9090, FAX: (732)271-9686  
1700 Wyatt Dr. #5, Santa Clara, CA 95054, TEL: (408)844-9400, FAX: (408)844-9401

**Emcore's full commitment to Sanan for technical support and customer service**

**1. Resident Engineer Program**

With 8 systems installation, Emcore is committed to provide a well-trained Resident Engineer exclusively at Sanan site to facilitate a good service for a period of 1.5 years.

**2. Final Design Review (FDR)**

A Final Design Review Meeting is to be held at Sanan's side within two weeks of the receipt and acceptance of the Purchase Order free of charge.

**3. Commitment of efficient system installation and materials demo**

Emcore is committed to complete both the phase II system installation and Emcore advanced materials demo (except UV LED) in 2 to 3 months Emcore actual working time, excluding the time for the material characterization spent more than 4 hours and facility-related issue which causes material characterization equipment and MOCVD equipment downtime.

It shall be Buyer's responsibility to prepare the installation site, in accordance with EMCORE's product specification, in time to accept delivery of the goods and to have relevant personnel available for the material demonstration. The installation is to be started on condition of the facility conditions check out by EMCORE engineer and the system moved into clean room by buyers.

**4. Post-Sales Technical Support**

Emcore China Service Team will respond or dispatch field engineer in response to Sanan's service call within 48 hours.

**5. Extended Field Process Support**

For long-term mutual collaboration between Sanan and Emcore, Emcore will assign its local Application Scientist for epi growth customer-site process support within the first year following to the sign-off of the last D300 GaNzilla system.

**6. Maximum Time of Material demonstration**

The phase II (hardware and software installation) and advanced materials demo (except UV LED) is to be completed in 3 months. Otherwise, the buyer shall have the right to ask the seller for postponing the time of next lot of shipment set forth in shipment schedule of this contract.

This commitment letter is part of purchase contract and is signed by the following parties.

Fujian Quanzhou Sanan Group:                     

Hakuto Enterprises Ltd.:                     

Emcore Corporation:                     

Date: Oct. 20, 2003

销售付款计划 (Payment Schedule of Purchase Contract PO-WP-2003-202-Rev. 1)

时间 Date	发货前电汇付款/TT Before Shipment	开立信用证L/C Issuing	发货后的L/C议付款 Against L/C after shipment	验收后的L/C议付款 Against L/C after acceptance	累计付款 Add Up	余款 Balance
第1月 1st month	US\$1,880,000				US\$1,880,000	US\$12,240,000
第3月 3rd month		US\$3,768,000			US\$1,880,000	US\$12,240,000
第4月 4th month	US\$940,000	前两台发货Delivery of the first two systems			US\$2,820,000	US\$11,300,000
第5月 5th month		US\$1,884,000	US\$1,884,000		US\$4,704,000	US\$9,416,000
第6月 6th month		第三台发货Delivery of the third system		US\$1,884,000	US\$6,588,000	US\$7,532,000
第8月 8th month	US\$940,000	US\$1,884,000			US\$7,528,000	US\$6,592,000
第9月 9th month		第四台发货Delivery of the forth system	US\$942,000		US\$8,470,000	US\$5,650,000
第11月 11th month	US\$940,000	US\$1,884,000		US\$942,000	US\$10,352,000	US\$3,768,000
第12月 12th month		第五台发货Delivery of the fifth system			US\$10,352,000	US\$3,768,000
第14月 14th month			US\$942,000		US\$11,294,000	US\$2,826,000
第16月 16th month				US\$942,000	US\$12,236,000	US\$1,884,000
第18月 18th month			US\$942,000		US\$13,178,000	US\$942,000
第24月 24th month				US\$942,000	US\$14,120,000	US\$0
付款合计Sum total	US\$4,700,000		US\$4,710,000	US\$4,710,000	US\$14,120,000	
担保合计Sum total	US\$4,700,000	US\$9,420,000				

备注：合同共计五台设备，总额合计1412万美元(total contract price of 14,000,000.00 for total five equipments)。

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Equipment and Spare Parts list  
per Contract No: PO-WP-2003-202-Rev.1

No.	description	unit	Qty
1	D300 GaNzilla	system	5
2	Spare parts	set	1

Delivery schedule for 5 D300 GaNzilla Systems  
per Contract No: PO-WP-2003-202-Rev.1

# of months after PO and downpayment received		4 months	6 months	9 months	12 months
# of D300 GaNzilla (1) tools to be shipped		2 systems	1 system	1 system	1 system
spare parts (2)					1 set

(1) Quotation Reference # 2304-GS16 Rev. 8

(2) Quotation Reference # 2310-SU05

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